

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AZRA RAHIM,

Plaintiff,

v.

PROVIDENCE HEALTH AND
SERVICES,

Defendant.

CASE NO. C13-1499RAJ

ORDER ON MOTION TO DISMISS

I. INTRODUCTION

This matter comes before the court on Defendant's motion to dismiss. No one has requested oral argument and the court finds oral argument unnecessary. For the reasons stated below, the court DENIES the motion to dismiss. Dkt. # 15. The court directs the parties to submit a joint statement in accordance with this order no later than May 14, 2014.

II. BACKGROUND

Plaintiff Azra Rahim contends that Defendant Providence Health and Services ("Providence") discriminated against her on the basis of her race, national origin, and gender when it terminated her from the family practice medical residency program at its Olympia hospital. The motion before the court challenges only her claims invoking Title VII of the Civil Rights Act of 1964, and only on the basis that she neither timely exhausted her remedies with the Equal Employment Opportunity Commission ("EEOC")

1 nor timely filed suit in this court after receiving a so-called “right-to-sue letter” from the
2 EEOC.

3 For purposes of this motion, no one disputes that Providence terminated Dr.
4 Rahim on May 29, 2012. Her complaint contains two allegations crucial to the motion
5 before the court.

6 1) On March 24, 2013, Dr. Rahim initiated, with the EEOC and the
7 Washington Human Rights Commission, in the form of completing an
8 Intake Questionnaire, a complaint for discrimination on the basis of
9 race, sex and national origin against Providence . . . pursuant to Title
10 VII

11 2) On May 23, 201[3],¹ Dr. Rahim received from the EEOC a Notice of
12 Right to Sue.

13 Compl. ¶¶ 152-53.

14 Those allegations matter for two reasons. First, Title VII conditions a plaintiff’s
15 right to sue on timely filing a charge of discrimination with the EEOC. A plaintiff must
16 make her charge within 180 days of the discriminatory conduct, unless she files her
17 charge with a “State or local agency with authority to grant or seek relief from such
18 practice,” in which case she must file her EEOC charge within the earlier of 300 days of
19 the discriminatory conduct or 30 days after the termination of the state or local agency’s
20 investigation.” 42 U.S.C. § 2000e-5(e)(1). Second, assuming that the EEOC itself does
21 not bring the plaintiff’s claim to a resolution, the plaintiff must sue within 90 days from
22 the EEOC’s notice of its decision on the charge. 42 U.S.C. § 2000e-5(f)(1).

23 In its motion to dismiss, Providence asserts that Dr. Rahim’s claims founder on
24 two grounds. First, Providence claims that she did not file a charge of discrimination
25 with either the EEOC or the Washington Human Rights Commission until March 27,
26 2013, which is 302 days after Providence terminated her. That neither meets the 180-day
27 deadline that Providence insists applies in this case, nor the 300-day deadline that Dr.
28 Rahim relies upon. Second, Providence claims that more than 90 days passed between

¹ The complaint states that “2012” was the year that Dr. Rahim received the right-to-sue letter, but no one disputes that this was a typographical error.

1 the EEOC's notice of her right to sue and August 21, 2013, which is the day she filed this
 2 suit. Providence also asks the court to sanction Dr. Rahim for pursuing her Title VII
 3 claims.

4 III. ANALYSIS

5 Providence invokes Federal Rule of Civil Procedure 12(b)(6) in support of its
 6 motion to dismiss.² Applying that Rule, the court must assume the truth of the
 7 complaint's factual allegations and credit all reasonable inferences arising from its
 8 allegations. *Sanders v. Brown*, 504 F.3d 903, 910 (9th Cir. 2007). The plaintiff must
 9 point to factual allegations that "state a claim to relief that is plausible on its face." *Bell*
 10 *Atl. Corp. v. Twombly*, 550 U.S. 544, 568 (2007). If the plaintiff succeeds, the complaint
 11 avoids dismissal if there is "any set of facts consistent with the allegations in the
 12 complaint" that would entitle the plaintiff to relief. *Id.* at 563; *Ashcroft v. Iqbal*, 556 U.S.
 13 662, 679 (2009) ("When there are well-pleaded factual allegations, a court should assume
 14 their veracity and then determine whether they plausibly give rise to an entitlement to
 15 relief."). The court typically cannot consider evidence beyond the four corners of the
 16 complaint, although it may rely on a document to which the complaint refers if the
 17 document is central to the party's claims and its authenticity is not in question. *Marder v.*

18 ² Providence invoked only Rule 12(b)(6), not any other portion of Rule 12(b). Without expressly
 19 arguing that the court lacks subject matter jurisdiction, it cited Ninth Circuit authority suggesting
 20 that exhaustion of Title VII claims is a prerequisite for a federal court to exercise subject matter
 21 jurisdiction. Def.'s Mot. (Dkt. # 15) at 6 (quoting *B.K.B. v. Maui Police Dep't*, 276 F.3d 1091,
 22 1099 (9th Cir. 2002). Despite these references, the court does not read Providence's motion as a
 23 motion to dismiss for lack of subject matter jurisdiction. If Providence had intended to bring that
 24 motion, it would have invoked Rule 12(b)(1), and would have mentioned the standards and
 25 evidentiary procedures that apply to a 12(b)(1) motion. *See, e.g., Safe Air for Everyone v.*
 26 *Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). The court notes that other courts have questioned
 27 whether Title VII's exhaustion requirements are jurisdictional. *See, e.g., Norris v. Foxx*, No.
 28 C13-5928BHS, 2014 U.S. Dist. LEXIS 31431, at *9-11 (W.D. Wash. Mar. 10, 2014); *Taylor v.*
Blank, No. , 2014 U.S. Dist. LEXIS 54290, at *8-10 (finding that "[o]lder Ninth Circuit
 decisions" suggesting that Title VII exhaustion is a prerequisite of subject matter jurisdiction do
 not comport with Supreme Court authority or more recent Ninth Circuit jurisprudence); *see also*
Kwai Fun Wong v. Beebe, 732 F.3d 1030, 1035-36 (9th Cir. 2013) (explaining difference
 between jurisdictional and nonjurisdictional statutory prerequisites). The court need not address
 that issue here, because even if Title VII's exhaustion requirements are prerequisites of subject
 matter jurisdiction, Dr. Rahim has satisfied those requirements, at least under the standards that
 apply to a Rule 12(b)(6) motion.

1 *Lopez*, 450 F.3d 445, 448 (9th Cir. 2006). The court may also consider evidence subject
 2 to judicial notice. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). When an
 3 affirmative defense “is obvious on the face of a complaint,” a defendant can assert that
 4 defense in a Rule 12(b)(6) motion. *Rivera v. Peri & Sons Farms, Inc.*, 735 F.3d 892, 902
 5 (9th Cir. 2013).

6 **A. Dr. Rahim Has Pleaded That She Filed An EEOC Charge Within 300 Days of**
 7 **Her Termination From Providence.**

8 Assuming that the 300-day deadline for filing an EEOC charge applies (an
 9 assumption that the court will revisit in Part III.C., *infra*), Dr. Rahim alleges that she
 10 timely filed that charge. Her complaint alleges that she filed her EEOC complaint on
 11 March 24, 2013, in the form of an “Intake Questionnaire” that she simultaneously filed
 12 with the Washington Human Rights Commission (“WHRC”). Accepting that fact as true,
 13 she filed her charge with the EEOC within 300 days of May 29, 2012.

14 Providence’s assertion that Dr. Rahim filed her EEOC charge on March 27, 2013,
 15 relies not on the allegations of the complaint, but on evidence beyond the scope of a
 16 motion to dismiss. Providence relies on document entitled “Charge of Discrimination”
 17 that Dr. Rahim signed on March 27, 2013. But Dr. Rahim’s complaint nowhere refers to
 18 a “Charge of Discrimination,” it refers to an “Intake Questionnaire” on which she stated a
 19 “complaint for discrimination on the basis of race, sex, and national origin” The law
 20 does not require a plaintiff to file a specific form, it merely requires a signed and verified
 21 writing (29 C.F.R. § 1601.9) that is “sufficiently precise to identify the parties, and to
 22 describe generally the action or practices complained of.” 29 C.F.R. § 1601.12(b); *see*
 23 *also Fed. Express Corp. v. Holowecki*, 552 U.S. 389, 405 (2008) (construing an intake
 24 questionnaire for an age discrimination claim to constitute a proper charge). Moreover, a
 25 charge that is inadequate can be amended, with the amended charge relating back to the
 26 date of the original. *Id.* In other words, absent an indication that Dr. Rahim’s intake
 27 questionnaire did not meet these requirements, it sufficed as a charge of discrimination

1 made within 300 days of Providence's allegedly discriminatory termination. Providence
2 chastises Dr. Rahim for not providing a copy of her March 24 Intake Questionnaire, but
3 that is not her obligation either in drafting her complaint or in responding to Providence's
4 motion to dismiss.

5 **B. Dr. Rahim Has Pleaded That She Filed This Suit Within 90 Days of Receiving**
6 **a Right-to-Sue Letter from the EEOC.**

7 To prove its claim that Dr. Rahim did not timely sue, Providence relies on the
8 right-to-sue letter that she admits she received. Unlike the "Charge of Discrimination"
9 that Providence attempted to introduce into the record, Dr. Rahim's complaint explicitly
10 refers to her right-to-sue letter. The court may consider it on a motion to dismiss.

11 The right-to-sue letter does not demonstrate that Dr. Rahim sued too late. The
12 letter indicates that it was mailed to Dr. Rahim on April 30. But the date of mailing is not
13 determinative. Instead, the 90-day limitations period begins on "the date on which a
14 right-to-sue notice letter arrived at the claimant's address of record." *Payan v. Aramark*
15 *Mgmt. Servs. L.P.*, 495 F.3d 1119, 1121 (9th Cir. 2007). Neither the complaint nor the
16 right-to-sue letter asserts that it arrived at Dr. Rahim's address of record more than 90
17 days before she sued on August 21, 2013. Indeed, the most natural reading of Dr.
18 Rahim's complaint (which asserts that she "received" the letter on May 23, 2013) is that
19 the letter was not delivered to her until May 23, 2013, fewer than 90 days before August
20 21.³ Providence notes that the Ninth Circuit applies a rebuttable presumption that mail
21 from the EEOC reaches its recipient three days after the date of mailing. *Payan*, 495
22 F.3d at 1125-26. Providence does not acknowledge, however, that the presumption
23 applies only "[w]here the date of actual receipt is unknown" *Id.* at 1122. Here, Dr.

24 ³ Dr. Rahim submitted her own declaration in support of her opposition to the motion to dismiss.
25 In it, she provides additional information about her initial EEOC charge as well as her receipt of
26 the right-to-sue letter. Dr. Rahim's evidence is beyond the scope of a Rule 12(b)(6) motion to
27 dismiss. The court has not relied on it. For that reason, it declines to consider Providence's
28 motion to strike portions of that declaration, other than to note that if Providence wishes to strike
evidence from the record, it ought to do better than offer two sentences that do little more than
offer legal conclusions and unelaborated citations to a hodgepodge of questionably applicable
rules of evidence.

1 Rahim's complaint establishes (for purposes of a Rule 12(b)(6) motion) that she received
2 the right-to-sue letter on May 23, 2013.

3 **C. The Court Will Not Resolve The Parties' Debate Over the Constitutionality of**
4 **Washington's Exemption of Religious Organizations from Its**
5 **Antidiscrimination Law.**

6 The court turns now to the parties' dispute over whether Dr. Rahim is subject to a
7 300-day deadline for filing an EEOC charge or a 180-day deadline. That is a dispute
8 only because of Providence's assertion that it is a not-for-profit religious organization.
9 Not-for-profit religious organizations are exempt from the Washington Law Against
10 Discrimination ("WLAD"), which provides protections similar to Title VII for
11 Washington employees. RCW 49.60.040(1) ("Employer" . . . does not include any
12 religious or sectarian organization not organized for private profit."). That matters in this
13 case (which raises no WLAD claim) because Dr. Rahim can take advantage of the 300-
14 day deadline to file an EEOC charge only if the WHRC is a "State or local agency *with*
15 *authority to grant or seek relief from*" the unlawful practices alleged in her complaint. 42
16 U.S.C. § 2000e-5(e)(1) (emphasis added). Where a state or local agency is "without
17 subject matter jurisdiction over a charge (*e.g.*, an agency which does not cover sex
18 discrimination or does not cover nonprofit organizations)," it is treated as an agency that
19 does not meet the requirements of 42 U.S.C. § 2000e-5(e)(1). 29 C.F.R. § 1601.13(2);
20 *MacDonald v. Grace Church Seattle*, 457 F.3d 1079, 1082 (9th Cir. 2006). The
21 *MacDonald* court held that a Title VII claim against a nonprofit religious employer in
22 Washington must be presented to the EEOC within 180 days, not 300 days. 457 F.3d at
23 1088.

24 What the *MacDonald* court did not decide was whether Washington's exemption
25 of nonprofit religious institutions from the WLAD complied with either the
26 Establishment Clause or the Equal Protection Clause of the United States Constitution.
27 457 F.3d at 1086 (declining to address the issue because the appellant raised it for the
28 first time on appeal). Dr. Rahim contends that the exemption violates both the United

1 States Constitution and the Washington Constitution. Since she filed her opposition to
2 the motion to dismiss, the Washington Supreme Court has foreclosed her argument
3 invoking the latter document. *Ockletree v. Franciscan Health Sys.*, 317 P.3d 1009, 1020
4 (Wash. 2014) (holding that the WLAD's exemption for religious nonprofit employers
5 violates neither Washington's constitutional privileges and immunities clause nor its
6 establishment clause). The Honorable Ronald B. Leighton of this District, who certified
7 the Washington constitutional questions in *Ockletree*, deferred consideration of a
8 challenge to Washington's religious organization exemption via the United States
9 Constitution. *Ockletree v. Franciscan Health Sys.*, No. C11-5836RBL, 2012 U.S. Dist.
10 LEXIS 185828, at *4-6 (W.D. Wash. Dec. 11, 2012).

11 For three reasons, the court will not decide the constitutionality of Washington's
12 religious exemption in resolving this motion. First, the parties have scarcely briefed it.
13 Providence suggested that *MacDonald* disposes of the issue, but *MacDonald* expressly
14 declined to do so. Dr. Rahim devoted just three pages to the issue, citing no Ninth Circuit
15 authority. Second, there is nothing in Dr. Rahim's complaint establishing that
16 Providence is a nonprofit religious organization within the scope of the exemption, and
17 Providence has not suggested that the court can take judicial notice of that fact. Third, no
18 one has complied with Federal Rule of Civil Procedure 5.1, which requires notice to
19 Washington's Attorney General of any challenge to the constitutionality of a state statute.

20 Although the court will not decide the constitutional question now, it likely cannot
21 avoid it. Providence can surely establish its status as a nonprofit religious organization,
22 and once it does so, it will put the constitutionality of Washington's exemption squarely
23 at issue. Once it does, Dr. Rahim can salvage her Title VII claims only by demonstrating
24 that the exemption is unconstitutional. Accordingly, the court directs the parties to meet
25 and confer and submit a joint statement as to their preferred method of resolving the
26 constitutional question. The joint statement is due no later than May 14, 2014.

1 Providence suggests that it is unfair to force it to bear the burden of discovery on
2 Dr. Rahim's Title VII claims when it is possible that they will founder on a threshold
3 issue. The court is not persuaded. Because she has raised a breach-of-contract claim and
4 a claim invoking 42 U.S.C. § 1981, Dr. Rahim's claims of wrongful termination and race
5 and national origin discrimination will remain part of this case regardless of the fate of
6 her Title VII claims. The only theory of discrimination that even arguably falls solely
7 under the ambit of Title VII is her assertion of gender discrimination. The court doubts
8 that the burden of discovery in a case asserting breach of contract, race and national
9 origin discrimination, and gender discrimination is much different than the burden of
10 discovery in a case with no gender discrimination allegation. In any event, Providence
11 has demonstrated no difference in that burden. Discovery will continue while the parties
12 address their constitutional dispute.

13 **D. The Court Denies Providence's Motion for Sanctions.**

14 Providence asks the court to sanction Dr. Rahim for asserting her Title VII claims.
15 It invokes Federal Rule of Civil Procedure 11, 28 U.S.C. § 1927, and the court's inherent
16 power. As to Rule 11, Providence's motion is meritless. Providence did not file its Rule
17 11 motion separately and did not comply with the Rule's safe harbor provision. Fed. R.
18 Civ. P. 11(c)(2). Even if it had, its motion falls well short of demonstrating a Rule 11
19 violation.

20 As to § 1927, that statute applies only to an attorney who "multiplies the
21 proceedings in any case unreasonably and vexatiously" On this record, Providence
22 falls well short of demonstrating unreasonable or vexatious conduct by Dr. Rahim's
23 counsel.

24 Providence also falls well short of convincing the court that it should exercise its
25 inherent power to do anything other than admonish Providence to consider whether its
26 request for sanctions was appropriate.

IV. CONCLUSION

For the reasons previously stated, the court DENIES Providence's motion to dismiss. Dkt. # 15. The parties shall submit a joint statement in accordance with this order no later than May 14, 2014.

DATED this 1st day of May, 2014.

A handwritten signature in black ink, reading "Richard A. Jones", written over a horizontal line.

The Honorable Richard A. Jones
United States District Court Judge